



answer to the petition has been filed.

B. Failure to Name a Proper Respondent

Petitioner fails to name the proper respondent. A petitioner seeking habeas corpus relief under 28 U.S.C. § 2254 must name the state officer having custody of him as the respondent to the petition. Rule 2(a) of the Rules Governing § 2254 Cases; Ortiz-Sandoval v. Gomez, 81 F.3d 891, 894 (9th Cir. 1996); Stanley v. California Supreme Court, 21 F.3d 359, 360 (9th Cir. 1994). Normally, the person having custody of an incarcerated petitioner is the warden of the prison in which the petitioner is incarcerated because the warden has "day-to-day control over" the petitioner. Brittingham v. United States, 982 F.2d 378, 379 (9th Cir. 1992); see also Stanley, 21 F.3d at 360. However, the chief officer in charge of state penal institutions is also appropriate. Ortiz, 81 F.3d at 894; Stanley, 21 F.3d at 360. Where a petitioner is on probation or parole, the proper respondent is his probation or parole officer and the official in charge of the parole or probation agency or state correctional agency. Id. Petitioner's failure to name a proper respondent requires dismissal of his habeas petition for lack of jurisdiction. Stanley, 21 F.3d at 360; Olson v. California Adult Auth., 423 F.2d 1326, 1326 (9th Cir. 1970); see also Billiteri v. United States Bd. Of Parole, 541 F.2d 938, 948 (2nd Cir. 1976).

C. Exhaustion

A petitioner who is in state custody and wishes to collaterally challenge his conviction by a petition for writ of habeas corpus must exhaust state judicial remedies. 28 U.S.C. § 2254(b)(1). The exhaustion doctrine is based on comity to the state court and gives the state court the initial opportunity to correct the state's alleged constitutional deprivations. Coleman v. Thompson, 501 U.S. 722, 731 (1991); Rose v. Lundy, 455 U.S. 509, 518 (1982).

A petitioner can satisfy the exhaustion requirement by providing the highest state court with a full and fair opportunity to consider each claim before presenting it to the federal court. Duncan v. Henry, 513 U.S. 364, 365 (1995). A federal court will find that the highest state court was given a full and fair opportunity to hear a claim if the petitioner has presented the highest state court with the claim's factual and legal basis. Duncan, 513 U.S. at 365 (legal basis); Kenney v. Tamayo-Reyes, 504 U.S. 1, 112 S.Ct. 1715, 1719 (1992) (factual basis).

Petitioner indicates that he appealed to the California Court of Appeal, Fifth Appellate District,

1 however he fails to indicate whether he sought relief in the highest state court.<sup>1</sup> (See Doc. 1 at 2.)  
2 Because Petitioner has not presented his claims for federal relief to the California Supreme Court, the  
3 Court must dismiss the petition. See Raspberry v. Garcia, 448 F.3d 1150, 1154 (9th Cir. 2006);  
4 Jiminez v. Rice, 276 F.3d 478, 481 (9th Cir. 2001); Calderon v. United States Dist. Court, 107 F.3d  
5 756, 760 (9th Cir. 1997) (en banc); Greenawalt v. Stewart, 105 F.3d 1268, 1273 (9th Cir. 1997). The  
6 Court cannot consider a petition that is entirely unexhausted. Rose, 455 U.S. at 521-22; Calderon, 107  
7 F.3d at 760. Therefore, the petition must be dismissed for lack of exhaustion.

8 **ORDER**

9 The Court DIRECTS the Clerk of Court to assign a district judge to the case.

10 **RECOMMENDATION**

11 Accordingly, the Court RECOMMENDS that the habeas corpus petition be SUMMARILY  
12 DISMISSED without prejudice for lack of jurisdiction.

13 This Findings and Recommendation is submitted to the United States District Court Judge  
14 assigned to this case, pursuant to the provisions of 28 U.S.C. § 636 (b)(1)(B) and Rule 304 of the  
15 Local Rules of Practice for the United States District Court, Eastern District of California. Within  
16 thirty days after being served with a copy, Petitioner may file written objections with the Court. Such  
17 a document should be captioned “Objections to Magistrate Judge’s Findings and Recommendation.”  
18 The Court will then review the Magistrate Judge’s ruling pursuant to 28 U.S.C. § 636 (b)(1)(C).  
19 Failure to file objections within the specified time may waive the right to appeal the District Court’s  
20 order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

21  
22 IT IS SO ORDERED.

23 Dated: May 18, 2020

/s/ Jennifer L. Thurston  
24 UNITED STATES MAGISTRATE JUDGE  
25  
26

27 <sup>1</sup> The Court has reviewed the docket of the California Supreme Court and there is no entry indicating sought relief in that  
28 court in any habeas corpus matter. The Court may take judicial notice of sources whose accuracy cannot be reasonably  
disputed (Fed.R.Evid. 201(b)(2)). Thus, the Court takes judicial notice of the on-line docket of the California Supreme  
Court.